

No. 2784

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

TSUIE SHEE et al,

*Appellants,*

vs.

SAMUEL W. BACKUS,

as Commissioner, etc.,

*Appellee.*

## BRIEF OF APPELLEE

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By....., Deputy Clerk.



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STATEMENT OF THE CASE.

The appellants, Tsuie Shee and Quan You, made an application to enter the United States as the wife and son respectively, of a native. After the application was made, an anonymous letter was received by the Immigration officials to the effect that applicants were not the wife and son respectively of the alleged husband and father, whose name is Quan Wy Chung. A thorough investigation was made in the case and the application to land refused, and applicants ordered deported.

A petition for a writ of habeas corpus was then filed on behalf of the applicants, to which a return was filed on behalf of the government. At the hearing before the lower court, it appeared that when the matter was presented to the Secretary of Labor upon appeal, it was not determined by the Secretary or the assistant Secretary as required by law, and said applicants were permitted to land upon giving a bond in the sum of \$1500 conditioned that they would surrender themselves again to the Immigration officials when their appeal was properly determined, providing the decision upon said appeal be adverse to their rights to land.

In pursuance to this decision, the whole record of the Immigration Bureau which contained all of the evidence presented in determining the said application, was again presented to the Secretary of Labor, and determined by the proper officials, and said applicants again ordered deported.

Following this order of deportation by the Secretary of Labor, the lower court was again appealed to for the dismissal of said applicants, but Judge Dooling in a decision found on page 100 of the Transcript of Record, held adversely to said applicants, and they were ordered to surrender themselves to the Immigration officials for deportation, and their discharge on habeas corpus was denied. It is from this decision that this appeal was taken.

## ASSIGNMENTS OF ERROR.

Counsel representing appellants has set forth on pages 2 and 3 of his brief, the following assignments of error:

1. That the hearing accorded the detained was unfair in this that there was not an honest effort made to arrive at the truth by methods sufficiently fair and reasonable to amount to due process of law.

2. That the action of the immigration officials in searching the baggage of appellant's husband, without his consent, was a violation of Article IV in Amendment of the Constitution of the United States.

3. That the withholding of certain letters and documents, containing new evidence and which were used on appeal, from the inspection of appellant and her attorney is a violation of Rule No. 5 (B) of the Rules governing the admission of Chinese.

4. That when the case was up for final hearing before the Secretary of Labor the appellant's counsel was not notified of said hearing and was given no opportunity to refute the charges contained in the new evidence submitted on the appeal.

## ARGUMENT.

In his argument, counsel seems to lay particular stress upon the unfairness shown by the Immigration officials in the hearing of the various matters

presented in determining appellants' case. In order to get a thorough understanding of the evidence submitted in this case, it is necessary to call attention to the report of J. H. McCall, found at page 25 of the original record of the Bureau of Immigration marked Exhibit "A". This report calls attention to the various discrepancies which appeared during the examination of said applicants and other witnesses concerned.

The report of John Endicott Gardner, Chinese Inspector and Interpreter, beginning on page 108 and ending on page 94 of said original record of the Bureau of Immigration marked Exhibit "A", sets forth very clearly the evidence considered by the Immigration officials in determining the present case. This report is as follows:

San Francisco, Cal.,  
May 29, 1914.

Commissioner of Immigration,  
Through Chinese Inspector in Charge,  
Port of San Francisco.

In re Tsui Shee, Wife of Native, 13406/7-2  
and Quan You, Son of Native, 13406/7-3  
("Mongolia" May 6th, 1914.)

With reference to the above entitled cases, I have the honor to report that the investigation of them was first conducted by Inspector McCall. Said investigation developed numerous discrepancies, on which alone he reported

adversely. Just as he was about to take up these cases, and while the alleged husband, Quan Wy Chung, alias Quan Choey Quock, was still at this Station, Inspector McCall considered it prudent to search the baggage of the alleged husband, as the result of which much incriminating evidence was found.

This evidence consisted of coaching papers; memorandum books containing accounts bearing on his efforts to aid and abet the illegal landing of many Chinese in conjunction with Jew Loy Sing, alias Jew Tsz Sik, a notorious steerer and highbinder up to his death at the hands of other highbinders while under indictment by the United States Grand Jury for tampering with court records; addresses of notorious prostitutes; accounts with such prostitutes; a quitclaim on one of the prostitutes who evidently became his paramour; and such like documents.

All of these were found by Inspector McCall in the possession of said alleged husband. I have gone carefully over these books, papers and so forth, and I have no hesitation in stating that they show the alleged husband to be a long time steerer—a man of despicable character; and from the discrepancies in the testimony of his alleged wife's case, and the coaching papers, he is now engaged in an attempt to import one more Chinese woman.

The child in the case is but a mere incident; brought in evidently merely to give the case the look of respectability. In a country like China, where there is such poverty all the time, and

starvation, children can be easily gotten for as low a price as ten cents, or perhaps even for nothing, in order to prevent starvation.

I will now enumerate the various documents, books and so forth brought by the alleged husband, evidently in an unguarded moment, to his own injury.

A coaching paper, marked Exhibit "1", gotten up for the purpose of coaching the alleged wife as to what she should give as the names of father, mother, grandfather, grandmother, and so forth, in order that they both may give the same names, it standing to reason that she should know the names of her own parents, without coaching, unless the object was as stated. This coaching paper also gives the date of her birth, which simple entry is what determines this coaching paper, in the form of a so-called marriage paper, to be fictitious; for the reason that the birth date was carelessly placed on a day that never existed, namely, the 30th day, 1st month, in the Kap Ng year (1894). Evidently the person who was fabricating this document did not even take the precaution to find out whether there was a 30th day in the 1st month of that year.

This coaching paper was wrapped in a piece of brown paper, marked Exhibit "2". On it is inscribed a number of Chinese characters, reading: "Please deliver the within contents to Quan Cheoy Quock" (alleged husband of applicant) "for him to coach Tsui Shee on; sent by Tsung Quock". This inscription indicates

that there is another Chinaman, in addition to the alleged husband, back of her importation.

Exhibit "3" is what might be called a quitclaim given by a Chinaman named Tso On in the case of a Chinese woman named Shun Gum, whom he evidently owned. Although the document is couched in language that would ordinarily indicate that it has reference to a loan, it actually has reference to a balance remaining unpaid by Shun Gum against her purchase price. This is indicated by the following words in the quitclaim: "In the event of Shun Gum making tens of thousands of dollars, becoming the mistress of her customers, all that shall be left with Shun Gum; it shall in no wise concern me. Tso On." This document, being in the custody of Quan Wy Chung, the alleged husband, would indicate that the ownership of Shun Gum has been transferred to him, he undoubtedly having paid the balance mentioned in the quitclaim, namely, \$600.00. This is borne out by the reported understanding among Chinese in Chinatown, San Francisco, that Shun Gum is the paramour or mistress of Quan Wy Chung; that she is a long time prostitute in San Francisco, serving white sailors and soldiers for the financial benefit of Quan Wy Chung. This document alone should condemn Quan Wy Chung as a man totally unworthy of the privilege of bringing a wife (so-called) into the United States.

A bill, Exhibit "4", containing references to transactions between this same Shun Gum and the firm of Quong Mow Yuen of Hongkong

gives further support to the indication that Quan Wy Chung is the owner of or the person controlling Shun Gum, from the fact that this bill, though referring entirely to transactions with Shun Gum, is presented to Quan Wy Chung for him to settle.

A little notebook, Exhibit "5", has an item referring to Shun Gum.

An envelope, Exhibit "6", has an inscription on it reading "the within are accounts of Auntie Tsoi Ngo." Tsoi Ngo is a notorious prostitute.

A paper memorandum, Exhibit "7", contains an entry: "Borrowed from Fung Ping \$30.00." And, alongside of it, an item reading: "Paid Jew Tsz Sik \$100.00." "Jew Tsz Sik" is the alias for Jew Loy Sing, the notorious high-binder referred to above.

Exhibit "8" is a memorandum book containing accounts referring to aiding and abetting the illegal landing of various Chinese. The book shows the people that co-operated with him in this, the principal man being the same Jew Loy Sing, and the prices for getting the Chinese into this country.

Exhibit "9" is his account book, with his name on it, referring to similar transactions to those recorded in Exhibit "8".

A paper memorandum, Exhibit "10", contains similar references.

Exhibit "11" has an item in it reading "Received of Suey Lin passage money, \$50.00."

“Suey Lin” is the name of a notorious Chinese prostitute.

Exhibit “12” is an account rendered to Quan Choey Quock, alleged husband, by Shung Chuck—full name Quan Shung Chuck—in which is an item reading “due from deposit for ‘guaranteed’ passage”, which is a Chinese term used for assisting Chinese to enter the United States fraudulently, the amount due being \$210.50.

Exhibit “13” is a letter addressed to Quan Choey Quock by a Chinaman signing his name as “Ing Fon”, stating that he had lately returned to Oakland. Ing Fon is one of the Chinese referred to in the accounts connected with the assisting of Chinese to enter the United States illegally mentioned above. The fact that Ing Fon can write from Oakland when the account referring to him shows he was in China proves that Quan Wy Chung was successful in steering him into the United States.

Exhibit “14” is a letter to Quan Choey Quock from “Chuck” in which the following language occurs: “You stated that the deposit of \$210.50 for guaranteed passage is correct.” This is the same phrase as that occurring in Exhibit “12”, and is the term generally used for assisting Chinese to enter the United States illegally.

Exhibit “15” is a letter written by Shung Tsun—full name Quan Choey Quock—the alleged husband, referring to a Chinaman whose true name was Him Quock, but who was evi-

dently returning to the United States under the false name of Quan Fook Sing (native, court record, 17 "Korea" September 27, 1905) (herewith), concerning whom the writer was apprehensive that his landing might be delayed or contested on the ground of his coming in under the false name. Quan Fook Sing, however, was landed for the reason that he had been adjudged a native of the United States by the District Court, and therefore, upon his return was forthwith admitted by this office. There is no doubt that Him Quock was so adjudged by competent authorities, but the letter shows the class of people the alleged husband and his friends belong to, that is, people whose business had reference to Chinese gaining admission into the United States under false names or through misrepresentations of one kind or another.

Exhibit "16" is a lengthy Chinese letter addressed to fifteen Chinese persons and sent by seven other Chinese persons from China with reference to a Chinese girl that was engaged to be married to a young Chinaman by the name of Ngon Hoy. This letter was written for the purpose of urging the father of Ngon Hoy, named Jew Sut Sing, to send his son back to China to marry the girl he was engaged to, for the reason that, according to Chinese customs, if a young man failed to claim his affianced within a certain time he forfeits the right to marry her, and her parents then marry her to another. It is evident from this lengthy letter and subsequent letters referring to the same subject

that Ngoy Hoy was illegally in the United States—doubtless smuggled into this country from Mexico or some other place. The father of Ngon Hoy, when this urgent appeal reached him considered that Quan Cheoy Quock was the right person to go to to have papers “fixed up” for Ngon Hoy to go to China and return.

In the letter marked Exhibit “17” this father writes: “I wish to inform you that my son, Ngon Hoy, has been engaged in China ever since before he came to this country the first time, and that the girl to whom he is engaged is now about 30 years old, and recently the eldest gentry of our family” (meaning the more venerable members of their clan) “had a meeting with the gentry, elders, fathers and brothers of the bride’s family, and decided that by the 6th month my son must return and marry the girl, otherwise the engagement will be called off and we will have no further controversy about it.” Continuing, this father states that he would beg Choey Quock to use his best efforts to get a merchant’s paper for his son, Ngon Hoy, so that he could return home to bring about the happy event desired; that he would pay all expenses for the “merchant’s paper”. (Ngon Hoy was at that time working as a cook in and around San Francisco.)

Exhibit “18” is another letter from the father of Ngon Hoy to Quan Choey Quock, the alleged husband, in which the following language occurs: “I have determined to get merchant’s papers for him, which would be the best plan. But do not apply for a native paper

for him, because at present native papers are hard for people to come and go on.”.

Exhibit “19” is one more letter from Ngon Hoy’s father to the applicant’s alleged husband, urging the latter to arrange at the earliest date to have Ngon Hoy go home. The writer also expresses the wish that the applicant’s alleged husband should consult with another Chinaman by the name of Gar Soon to have coaching paper prepared for him.

Exhibit “20” is another letter from Ngon Hoy’s father to Quan Choey Quock stating he had received word from Ngon Hoy’s mother in China to return home on the “Korea” the 3rd month, 20th day—which would be some time in 1905, April or May.

Exhibit “21” is a letter from the father of Ngon Hoy unintentionally giving this office a clue by which to locate the record concerning Ngon Hoy. With that clue I found that Quan Wy Chung succeeded better than the father of Ngon Hoy ever hoped for, as, from the papers located, Quan Wy Chung succeeded in bringing about his admission into the United States as a native thereof. The record of the case is entitled “Jew Hoy, 28 ‘Manchuria’ May 13th, 1906.” The testimony in this case as given by Ngon Hoy, whose full name is Jew Ngon Hoy, is to the effect that at that time he was a cook by occupation. Consequently he could not, then, go on merchant’s papers. It is also evident from this record that his claim to nativity was false, as he testified that he was never out of this country from the time of his birth, when

the correspondence in this case shows that he came to the United States from China after he had been engaged to be married to a Chinese girl there.

Exhibit "22" is a letter from the father of Ngon Hoy acknowledging his thanks to Quan Choey Quock for securing the admission of his son, whom he calls in this letter, however, his nephew Yun Hoy,—phonetically the same as Ngon Hoy.

After Quan Wy Chung was so successful in turning a native of China into a native of the United States two other Chinese were steered is as brothers of Ngon Hoy, and also as natives of the United States. The records in their cases are respectively Jew Wing, raw native, Number 28 "China", March 23rd, 1909, and Jew Thing, raw native, Number 7 "China" January 22nd, 1910. Shortly after these steerers succeeded in procuring the admission of Jew Thing, they continued their work by enabling younger Chinese to come to the United States as his sons, one being named Jew Fook (son of native, 96 "Manchuria" August 28th, 1909), the other Jew Quong Tai (son of native, 194 "Manchuria" November 12th, 1909).

Unfortunately for the ends of justice, Jew Hoy went to China and returned and was admitted as late as April 22nd 1914, returning as a prior landed native ex "Manchuria" (13376/7-25).

Here is a batch of five Chinese, all unlawfully in the United States—gotten in through

the agency of Quan Wy Chung, the alleged husband of Tsui Shee. This number has reference only to those who have already been admitted; there are others mentioned in these records who would have the same right to come as the five, except for this expose'—the total, what with wives and daughters and sons, being possibly as many as a score or more. The papers relating to the five mentioned are herewith transmitted for your inspection.

One of the memorandum books found in the possession of the alleged husband of Tsui Shee has a reference to a Chinaman who was to be gotten into the country under the false name of Jew See Song. From the data given in said account book I was able to locate the record in that case which is entitled Jew She Song, son of native, San Francisco, 85 "China" June 8th, 1909. His admission was secured as the son of Jew Fook, who was able to secure admission for himself some years before as a native (3852 "Siberia" May 27th, 1904). This man, Jew Fook, was made the father of three other boys, namely, Jew Shee Fong, (139 "Mongolia" November 27th, 1908); Jew She Fun, (Number 1 "Manchuria" March 29th, 1909); and Jew See Wy (65 "Siberia" October 28th, 1909). He failed to secure admission of one (Jew See Wy). Papers in these cases herewith.

These are merely specimen cases that I have found bearing on the fraudulent transactions of the alleged husband of Tsui Shee. Doubtless if we had more time the other entries referring

to such transactions could be run down and the records could be found.

From the discrepancies in the testimony of Tsui Shee's case and that of her alleged son, and this mass of incriminating evidence, I join Inspector McCall in his adverse recommendation as to both cases.

(Signed) Jno. Endicott Gardner,  
Chinese Inspector and Interpreter.

The anonymous letter to which the attention of the Immigration officials was directed, is found on page 81 of said original record of the Bureau of Immigration.

In this case, like the other immigration cases recently considered on appeal by this court, there is a stipulation to the effect that all of the records of the Bureau of Immigration are to be considered a part of the Transcript on appeal. This stipulation is found on page 108 of the Transcript of Record.

During the early hearings in this case, appellants were represented by entirely different counsel from counsel representing them at the present time.

An examination of the record will show that the principal question urged before present counsel took charge of the case, was cured when the record was again presented to them so that the order of deportation could be made by the Secretary or acting Secretary of Labor in accordance with the views of

Judge Dooling. Since this was properly done, as is shown on page 151 of the said original record of the Bureau of Immigration, the government is at a loss to understand just what objections are being presented at the present time. It is true that counsel calls attention to certain papers and evidence being submitted without giving counsel proper opportunity to examine the same, but counsel fails to call attention to what this evidence was that was submitted. An examination of pages six and seven of Respondent's "Ex. D" on file herein will show conclusively that such was not the case.

In the case of *Chin Hing vs. White* recently decided in this court, found in 234 Fed. 616, a similar question was presented to the court that now appears for determination in this case. In that case the decision supports the contention of the government in this case.

It is a well recognized fact in the immigration law that unless the proceedings of the immigration officers are manifestly unfair, or their action is such as to prevent a fair investigation, the proceedings taken by them cannot be disturbed.

*Low Wah Suey vs. Baccus*, 225 U. S. 460

And their findings are final and conclusive.

*Ekiu vs. U. S.* 142 U. S. 651

*Lee Lung vs. Patterson*, 186 U. S. 170

*Zakonaite vs. Wolf*, 226 U. S. 272

A review of the record in this case fails to show any unfairness on the part of the immigration officials in conducting their hearings in this case. For that reason, the order of deportation of the Secretary of Labor and the holding of the lower court should be sustained.

Respectfully,

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United States Attorney,

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